

**BOARD OF APPEALS CASE NO. 5280**

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**BEFORE THE**

**APPLICANT: CBDL LLC**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to construct a building  
within the required 35 foot rear yard setback;  
1003 Edgewood Road, Edgewood**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 8/14/02 & 8/21/02**

**Record: 8/16/02 & 8/23/02**

**HEARING DATE: September 23, 2002**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, CBDL LLC, is requesting a variance pursuant to Section 267-39B, Table XII, of the Harford County Code, to construct a building within the 35-foot rear yard setback (29 feet proposed) in a B3 District.

The subject property is located at 1003 Edgewood Road, Edgewood, MD 21040 and is more particularly identified on Tax Map 65, Grid 2F, Parcel 1008, Lot 2. The parcel consists of .575 acres, is zoned B3/General Business and is entirely within the First Election District.

The Applicant first called Susan Dieter as an adverse witness. Mrs. Dieter is a member of GRS, a partnership that owns the property upon which Harford Carpet operates its business. Mrs. Dieter is an employee of Harford Carpet. The Applicant operates, Carpets by Denny Lee, located adjacent to the GRS property. The witness denied that her opposition was based on potential economic harm to Harford Carpet and stated that her concern was potential additional flooding that would result from the proposed addition to the Applicant's building.

Mr. Dennis Lee appeared and stated that he is the Applicant in this case. Mr. Lee operates Carpets by Denny Lee, the business name of CBDL LLC. Proposed is a variance from the rear yard setback provisions of the Code of 6 feet to allow his warehouse to be extended to accommodate rolls of carpet. Carpet rolls are 12–15 feet in length and are moved by forklift. Because the front of the building is the showroom, there is no other practical location for the proposed addition according to the witness. Mr. Lee indicated that his business is located next door to Harford Carpet with whom he has competed for 13 years.

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Mr. Lee, using photographs as evidentiary aids, described a stand of trees existing between his parcel and that of GRS (Ex. 8b). The witness also described an existing stream and under-road channelization that has prevented flooding that used to occur in the past. The proposed addition not only adds 2000 square feet of space, more importantly, according to the Applicant, it adds sufficient length to accommodate carpet rolls and their movement by forklift. The retail showroom was recently remodeled and storage of carpet rolls in that area is impractical according to the witness.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning (Department). Mr. McClune stated that the Department concluded that the property had unique topographic conditions and features that warranted a grant of the requested variance. In recommended approval of the request, the Department also considered the location of the parcel within the Edgewood revitalization area which encourages redevelopment like that proposed. The parcel has a stream on the property and the proposed addition is located away from the stream which is a desirable planning objective according to McClune. If located to the front there would result in more impervious surface, an undesirable outcome according to McClune. McClune described the parcel as small, improved by a commercial carpet store and associated parking area. The store was constructed to the rear of the property and more than typically found in the area. In fact the building is 36 feet from the rear property line and 67 feet from the front property line. There is a drainage and utility easement that encumbers the southern portion of the property. In addition there is an existing stream, and vegetated stream buffer on the property. According to McClune, all of these factors combine to make the parcel unique. The additional area proposed meets the side yard setback requirements but will result in a 6-foot encroachment into the rear yard setback. According to McClune the addition is reasonable and consistent with other retail carpet operations. The proposed location of the addition is the only area that would not result in adverse impact to sensitive natural features found on the lot. In the opinion of McClune and the Department, the proposed addition will not have any adverse impact on adjacent properties.

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Mr. Art Leonard appeared for the opposition and qualified as an expert in civil engineering and site planning. Leonard described all of the natural features on the parcel including the stream, the stream buffers and floodplain. He admitted that he did not do a field delineation of wetlands nor did he check County wetlands delineation. Leonard stated that the Applicant's property is 70% encumbered by NRD buffer. In Leonard's opinion this addition could be placed on the front of the building without the need for a variance. Leonard did not express an opinion whether placing this addition on the front would be practical, however, given the configuration of the Applicant's showroom and carpet storage area.

Last to testify was Susan Dieter, previously called by Applicant as an adverse witness. Dieter testified that flooding had occurred on this parcel in 199 and she was concerned that this addition would recreate earlier flood conditions. She believes the addition will result in flooding which would be adverse to her business and is the basis of her opposition.

### **CONCLUSION:**

The Applicant, CBDL LLC, is requesting a variance, pursuant to Section 267-39B, Table XII, of the Harford County Code, to construct a building within the 35-foot rear yard setback (29 feet proposed) in a B3 District.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

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The Hearing Examiner is satisfied that the Applicant's property has unique characteristics. It is a relatively small lot encumbered by easements, stream and associated buffers. The building has existed on the site for more than 20 years and was originally placed far to the rear of the parcel compared to the distance of the building from the front property lines. Importantly, the parcel is part of the Edgewood Revitalization District that encourages redevelopment of properties in this area. The storage space proposed by the Applicant is not excessively large and is a use normally associated with a retail carpet business. While it is true that the Applicant could add this storage area to the front of the building, it would not be functional as the front of the building is showroom at present and the rear and sides are storage. **In order to accommodate an addition to the front of the building, the Applicant would need to restructure the entire interior of the building.** Requiring the Applicant to redevelop the property in a manner that imposes such an economic hardship is unwarranted given the minimum deviation from Code requirements requested (6 feet) and the overall purposes of the Edgewood Revitalization District in encouraging businesses to redevelop and improve their properties.

**The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:**

- 1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.**
- 2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists."**  
**Cromwell v. Ward, 102 Md. App. 691 (1995).**

The Hearing Examiner finds that the Applicant has met both prongs of the test set forth in Cromwell.

The last requirement of the Code is a finding that the variance can be granted in a manner that does not result in adverse impact to adjacent properties or in a manner that would materially impair the purposes of the Code. The protestants failed to demonstrate that any adverse impacts would result from the addition. While there was testimony that additional building space could potentially create additional flooding, the testimony was speculative. No evidence was presented to the Hearing Examiner that any flooding would result if this building were enlarged as proposed by the Applicant and, ignored the fact that expansion to the front of the building would be allowed without a variance. Presumably, any impacts associated with a building addition to the rear of the parcel would also be associated with an addition located to the front, therefore any potential flooding, even assuming such would occur, is not a function of the variance being requested. Also of note is the Department's concerns that placing the addition to the front of the building would not reflect good planning and zoning practices because that location would actually place the building closer to the sensitive natural features of the parcel sought to be protected. That is also a unique characteristic of this property since the Applicant, without a variance, could build his addition on the front of the building but the result would be unwanted damage to sensitive natural features that can be avoided by the grant of the variance, thus observing the spirit and intent of the zoning ordinance.

Based on the above conclusions, the Hearing Examiner recommends approval of the requested variance subject to the following conditions:

1. The Applicant obtain any and all necessary permits and inspections.
2. The Applicant shall not encroach further into the setback than presently proposed.

Date: NOVEMBER 13, 2002

William F. Casey  
Zoning Hearing Examiner